

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

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In re:

Case No.: 8-24-73979-las

Garrett Bernard Tupper, Jr.,

Chapter 13

Debtor.

Hon. Judge: Louis A. Scarella

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**LIMITED OBJECTION TO THE CHAPTER 13 TRUSTEE'S MOTION TO DISMISS
AND REQUEST TO RETAIN JURISDICTION**

**TO: THE HONORABLE LOUIS A. SCARCELLA
UNITED STATES BANKRUPTCY JUDGE**

SN Servicing Corporation as servicer for U.S. Bank Trust National Association as Trustee of Dwelling Series IV Trust (together with any successor or assign, "Secured Creditor"), by its undersigned attorneys, hereby files this Limited Objection to the Chapter 13 Trustee's Motion to Dismiss Case with Prejudice ["Motion to Dismiss", dkt. no. 11], and in support thereof, submits as follows:

1. Secured Creditor holds a mortgage loan (the "Loan") on the Debtor's real property located at 537 Liberty Ave, Williston Park, NY 11596, Nassau (the "Property").
2. Contemporaneous with the filing of this Limited Objection, the Secured Creditor has also prepared and is filing a motion seeking prospective in rem relief pursuant to 11 U.S.C. § 362(d)(4) ("In Rem Motion"). This stay relief motion is predicated upon the 2022 Judgment of Foreclosure and Sale and the subsequent three (3) unprosecuted filings of the Debtor since 2022 – each of which was timed to stop a scheduled foreclosure sale and frustrate the Secured Creditor's rights with respect to the Property.
3. Secured Creditor does not oppose dismissal of the instant bankruptcy case, or the relief sought in the Motion to Dismiss.

4. However, Secured Creditor respectfully requests that the Motion to Dismiss and any other dismissal order be adjourned until after its In Rem Motion can be heard.

5. Additionally, Secured Creditor respectfully requests that this Court delay entry of any Order dismissing this case until after its In Rem Motion is filed, heard, and decided.

6. Pursuant to 11 U.S.C. § 105(a), the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code.

7. Pursuant to 11 U.S.C. § 349(b)(3), the bankruptcy court may retain jurisdiction over estate property post-dismissal. “Retention of jurisdiction over the real property at issue to rule on an in rem motion despite dismissal of a case is an appropriate tool to curtail abuses of the bankruptcy system.” *In re Merlo*, 646 B.R. 389, 392 (Bankr. E.D.N.Y. 2022). The Second Circuit has held that bankruptcy courts have the “authority to exercise post-dismissal jurisdiction over actions relating to the debtor's property which are pending in the Bankruptcy Court at the time of dismissal.” *Id.* at 398, *citing In re Porges*, 44 F.3d 159, 161 (2d Cir. 1995).

8. Therefore, Secured Creditor respectfully requests that any dismissal of the underlying bankruptcy case be delayed and adjourned until such time as its In Rem Motion can be heard and decided.

WHEREFORE, Secured Creditor respectfully requests that this Court delay entry of a dismissal order until after its In Rem Motion is filed and decided; along with such other and further relief as is deemed to be just, proper, and equitable.

Dated: November 15, 2024
Garden City, NY

Respectfully submitted,
FRIEDMAN VARTOLO, LLP
By: /s/ Michael Rozea
Michael Rozea, Esq.
1325 Franklin Avenue, Suite 160
Garden City, New York 11530

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I, Michael Rozea, an attorney duly admitted to practice law before the District Courts of the State of New York, respectfully certify that I am not a party to this action, am over 18 years of age and reside in the State of New York. On November 15, 2024, I caused to be served the foregoing Limited Objection by mailing the same in a sealed envelope, with postage paid thereon, in an official depository of the United States Post Office, addressed to the last known address of the addressee(s) as indicated below:

Garrett B. Tupper, Jr.
537 Liberty Ave
Williston Park, NY 11596
Bankruptcy Pro-Se Debtor

Aileen Tupper
537 Liberty Ave
Williston Park, NY 11596-0000
Bankruptcy Co-Debtor

Michael J. Macco
2950 Express Drive South, Suite 109
Islandia, NY 11749
Bankruptcy Trustee

United States Trustee
Long Island Federal Courthouse
560 Federal Plaza - Room 560
Central Islip, NY 11722
Bankruptcy Trustee

/s/ Michael Rozea
Michael Rozea Esq.